

IN SENATE OF THE UNITED STATES.

MARCH 6, 1848.

Submitted, and ordered to be printed.

Mr. MASON made the following

REPORT:

[To accompany bill S. 161.]

*The Committee of Claims, to whom was referred the petition of Samuel Grice, asking indemnification for losses sustained by his failure to deliver a quantity of live oak timber under a contract with the Navy Department, and which failure resulted from the seizure of his boat by an officer of the army of the United States, and its detention in the military service, have had the same under consideration, and respectfully report:*

That this claim was fully examined and reported to the Senate by the late Senator Pennybacker, whose report is hereto annexed and referred to for the facts of the case.

The committee find that, since the date of that report, in February, 1846, evidence on the principal heads then wanting has been supplied in a satisfactory form.

It is now proved that the memorialist has been paid the value of his boat, which is evidence that she was never recovered after her seizure by the military force, and that it was utterly impracticable either to supply her place by constructing a new one on the coast of Florida, or to get the timber in question on board a vessel without the aid of a lighter. Thus making it manifest to your committee that the loss of the timber was the *direct* and *necessary* consequence of the loss of his boat by the memorialist. The committee is therefore of opinion, that he should be paid the value of the timber at the place where it was left, on the coast of Florida, and they report a bill for his relief accordingly.

IN SENATE OF THE UNITED STATES—February 24, 1846.

*The Committee of Claims, to whom was referred the "memorial of Samuel Grice, asking indemnification for losses sustained by failure to fulfil a contract with the government, which he was prevented from doing by the act of an officer of the United States," have had the same under consideration, and report:*

It is alleged that the memorialist, in the year 1836, being under contract with the government to deliver a quantity of live oak timber at the port of Brooklyn, State of New York, chartered and despatched a vessel to Halifax river, East Florida, where said timber was then lying; that on arriving in the river, application was made for a lighter, the property of the memorialist, to transport the timber to the vessel, which could not approach nearer on account of the shallowness of the water. An answer to the application was received from Major Kirby, then in command of a military station in the vicinity, stating that the lighter had been taken by him to carry provisions to a post twenty miles up the river, and that owing to the exigency of the public service she could not be delivered up; that owing to this refusal, there being no other boat of the kind in the river, the vessel sailed, after a week's delay, without effecting the object of her voyage, and the timber had been permitted to remain until it became unfit for use, and was lost to the memorialist. It is in proof that the lighter belonged to the memorialist, and that Major Kirby did refuse to give her up when requested to do so, for the reason above stated; also, that the vessel left the river in a short time, as one of the witnesses states within *a week*, without effecting the object of her voyage; but the committee wish to be informed on the following points: There is no evidence as to the time during which the boat was detained in the service of Major Kirby, nor whether more than one application was made for her. The committee wish further to know whether the memorialist was paid, as was probably the case, for the use of the boat, and what sum was actually paid by him for the charter of the vessel; also, whether no other boat could have been procured to answer the purpose, and whether the timber could not have been towed to the vessel by means of a raft and the boats belonging to her. The committee recognize the right of the memorialist to indemnification, so far as he was subjected to loss by the act of the officer of the government, however necessary under the circumstances of the case; but there is no evidence in this case to show that the timber was totally lost, or that the charter-party was rendered valueless by a detention which, so far as the testimony goes, did not exceed a few days. From the shortness of the distance to the post to which the supplies were sent, 20 miles, it may be reasonably inferred the service for which the boat was pressed was of limited duration, and consequently she would have been at the disposal of her owner and his agents in the course of a few days, had they been disposed to wait so long. It cannot be expected that the government will pay for the timber in question, unless it be shown

that, in consequence of the act of its officers, it became necessary to leave the logs where they were during two entire seasons, and that due diligence was used by the memorialist, and those in his employ, to prevent the loss. Of the necessary consequence of the exposure of timber in water in warm latitudes, the committee are fully aware; but before they can sanction the indemnification asked for in this instance, they must be satisfied that the alleged loss was not caused by a want of proper effort on the part of those who demand it.

Without further and more satisfactory evidence on the points above named, the committee do not think the claim should be allowed. Therefore,

*Resolved*, That on the evidence in the case the prayer of the memorialist should not be granted.

